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FORM**

(to be used for all correspondence after initial filing)

<b>Application Number</b>	09/704,881		
	<b>Filing Date</b>	November 2, 2000	
	<b>First Named Inventor</b>	Watkins	
	<b>Group Art Unit</b>	1772	
	<b>Examiner Name</b>	Muggins	
<b>Total Number of Pages in This Submission</b>		<b>Attorney Docket Number</b>	4022-000007

**ENCLOSURES (check all that apply)**

<input type="checkbox"/> Fee Transmittal Form  <input type="checkbox"/> Fee Attached  <input type="checkbox"/> Amendment / Response  <input type="checkbox"/> After Final  <input type="checkbox"/> Affidavits/declaration(s)  <input type="checkbox"/> Extension of Time Request  <input type="checkbox"/> Express Abandonment Request  <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s)  <input type="checkbox"/> Response to Missing Parts/ Incomplete Application  <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application)  <input type="checkbox"/> Drawing(s)  <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition  <input type="checkbox"/> Petition to Convert to a Provisional Application  <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address  <input type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> Request for Refund  <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group  <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences  <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)  <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter  <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):  <b>Communication Concerning Appeal Brief Under 37 C.F.R. 41.37, Amended Appeal Brief Under 37 C.F.R. 41.37 (in triplicate) and Return Postcard</b>
<b>Remarks</b>		<b>The Commissioner is hereby authorized to charge any additional fees that may be required under 37 CFR 1.16 or 1.17 to Deposit Account No. 08-0750. A duplicate copy of this sheet is enclosed.</b>

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

<b>Firm or Individual name</b>	Harness, Dickey & Pierce, P.L.C.	<b>Attorney Name</b>	Anna M. Budde	<b>Reg. No.</b>	35,085
<b>Signature</b>	Anna M. Budde				
<b>Date</b>	EV 717 344 066 US (1/30/2006)				

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EV 717 344 066 US



**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No.: 09/704,881  
Filing Date: November 2, 2000  
Applicants: Richard L. Watkins  
Group Art Unit: 1772  
Examiner: Michael C. Miggins  
Title: Process for Improving Interfacial Adhesion in a Laminate  
Docket No .: 4022-000007

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Director of the United States Patent and Trademark Office  
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**Communication Concerning Appeal Brief Under 37 C.F.R. § 41.37**

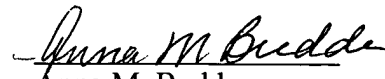
Sir:

Applicants received a Notification of Non-Compliant Appeal Brief, mailed January 12, 2006, for which a response is due February 12, 2006. The Notification stated, "While applicant does provide a summary of the invention and most of the paragraphs contain reference by column [sic: page] and line numbers, the second full paragraph of the summary of the invention (page 2 of brief) which is a summary of claim 1 does not contain column [sic: page] and line number references."

Accordingly, as the noncompliance is limited to the second full paragraph of the summary of the invention on page 2, Applicants have amended only this paragraph in the

accompanying Amended Appeal Brief. The Amended Appeal Brief is submitted in triplicate.

Respectfully submitted,

  
Anna M. Budde  
Registration No. 35,085

January 30, 2006  
Harness, Dickey & Pierce, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600



**PATENT**

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Director of the United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Amended Appeal Brief Under 37 C.F.R. § 41.37**

Sir:

This is an appeal from the Office Action mailed July 6, 2005, finally rejecting claims 1-8, 10-19, and 26-28. A Notice of Appeal was mailed on October 13, 2005 appealing all of the rejected claims. This Appeal Brief is due on December 13, 2005.

This Brief is accompanied by the fee under 37 C.F.R. § 41.20(b)(2).

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### **Real Party in Interest**

The real party in interest is Nike, Inc., a corporation of the State of Oregon, to which the inventors assigned all rights in this invention. The assignment was recorded in the United States Patent and Trademark Office on February 27, 2001 at reel 011543, frame 0796.

### **Related Appeals and Interferences**

An appeal filed in U.S. Patent Application 10,137,531 on October 13, 2005 is related to this appeal. U.S. Patent Application 10,137,531 is a continuation-in-part of the present application. The final rejections of both application rely on Ramesh, U.S. Patent 6,274,228 as a primary reference and cite Wang et al., U.S. Patent No. 6,124,007 and Bonk et al., US 6,082,025 as secondary references.

### **Status of Claims**

Claims 1, 3-8, and 10-29 are pending in the application.

Claims 1-8, 10-19, and 26-28 stand finally rejected.

Claims 20-25 and 29 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form.

### **Status of Amendments**

No amendment was filed after the final rejection.

### **Summary of Claimed Subject Matter**

Applicants claim a method for improving adhesion between two adjacent layers of a laminate membrane (independent claim 1 and dependent claims 3-17 and 26-28) and a laminate formed according to the method (dependent claims 18 and 19). Claims 20-25 and 29, objected to, are directed to a laminate formed into an inflated bladder and articles including it.

The method of independent claim 1 includes forming a laminate with a first thermoplastic layer adhered to an adjacent second thermoplastic layer and an interfacial boundary between them. Page 3, lines 19-20; page 8, line 12 to page 9, line 10. There is a lag time during which the laminate is below a temperature at which significant diffusion across the interfacial boundary takes place. Page 4, lines 12-15. Then, the laminate is annealed at a temperature at least about 80°C above a thermal transition temperature of at least one polymeric component of at least one of the layers. Page 6, lines 19-21. The annealing is for a time sufficient for the at least one polymeric component to partially diffuse into the adjacent layer. Page 3, line 19 to page 4, line 1; page 6, lines 8-10; page 7, line 3 to page 8, line 11.

“Partially diffuse into the adjacent layer” means that a measurable amount of diffusion takes place, an amount that can be observed by scanning electron microscopy or measured indirectly as an increase in peel strength of the membrane layers. Page 4, lines 1-7. For instance, in comparing Example 1 and Comparative Example A (page 27, line 5 to page 28, line 2 and the table that follows line 2), partial diffusion of a material across the interfacial boundary in Example 1 is evidenced by a four-fold increase in peel adhesion, from 4 pounds per linear inch

measured on the non-annealed sample A to 17.6 pound per linear inch measure for annealed sample 1.

The annealing temperature is at least about 80°C above a thermal transition temperature of the diffusing component. A “thermal transition temperature” refers to the midpoint of a temperature transition region over which the polymeric component exhibits significant changes in properties. Page 6, lines 10-12. The thermal transition temperature may be a glass transition temperature or a crystalline melting point. *Id.* at lines 12-13.

*Separately rejected claims*

Claim 3 was separately rejected. Claim 3 depends on claim 1 and adds a further limitation of at least one of the first and second layers including a semi-crystalline polymeric component. A semi-crystalline polymeric component has a crystalline melting thermal transition associated with its crystalline regions as well as a glass transition temperature associated with its amorphous regions. Page 9, lines 5-7.

Claim 26, claim 4, and claim 4's dependent claims 16-19, 27, and 28 were separately rejected. Claim 26 depends on claim 1, further requiring at least one polymeric component of at least one of the layers has a glass transition temperature in the range of from about -30°C to 20°C. Polyurethane elastomers prepared with polyester diols, the diols having glass transitions in this range, are described on pages 10-11. Claim 4 depends on claim 1, further requiring the first layer to be a thermoplastic elastomer layer and the second layer to be a thermoplastic polymeric barrier layer. These layers are described generally on page 9, lines 1-10.



Thermoplastic elastomers are described in more detail from page 9, line 11 to page 17, line 22; thermoplastic polymeric barrier layers are described in more detail from page 18, lines 1 to 23.

Claims 10-15 were separately rejected. Claim 10 is dependent on claim 4; claims 11-15 are dependent on claim 10. Claim 10 adds a limitation that the laminate is formed into a shape by blow molding before the annealing step. A laminate film of flat or tubular shape may be blow molded into a desired final shape in a mold having that shape. Page 20, lines 15-23. The blown, shaped laminate is allowed to cool and harden before being removed from the mold. Page 21, lines 4-6. Generally, the annealing should be shortly after blow molded, as set out in claims 11-15, to avoid significant modulus building in laminate layers that might interfere with the actions that improve interfacial adhesion during the annealing step. Page 22, lines 3-5.

#### **Grounds of Rejection to Be Reviewed on Appeal**

Claims 1, 2, and 5-8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ramesh et al., US 6,274,228.

Claim 3 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Ramesh et al., US 6,274,228 in view of Wang et al., U.S. Patent No. 6,124,007.

Claims 4,16-19, and 26-28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ramesh et al., US 6,274,228 in view Bonk et al., US 6,082,025.

Claims 10-15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ramesh et al., US 6,274,228 in view Bonk et al., US 6,082,025 and Wang et al., U.S. Patent No. 6,124,007.

## Argument

### **I. Claims 1 and 5-8 are patentable over Ramesh et al., US 6,274,228.**

The Ramesh patent concerns films that are oriented to be heat-shrinkable. Column 3, lines 43-52. A film is oriented by rapid stretching at a temperature above the glass transition temperature and, for a semi-crystalline material, below the melting point, followed by rapid quenching to preserve the molecular order obtained through the stretching. When the film is heated again to a high enough temperature for molecular movement, the molecules relax and the film shrinks. See, column 6, lines 12-20.

The Ramesh heat shrinkable film has a problem of shrinking along its width at warm storage temperatures. Column 2, lines 13-18. Ramesh teaches that annealing a web of the film at temperatures slightly higher than expected storage temperatures overcomes the problem of width shrinkage, but reduces interlayer bond strength compared to non-annealed films. Column 2, lines 62-67 (“annealed films can exhibit inter-ply bond strength significantly inferior to that of non-annealed films”).

In Applicants’ method, a laminate is annealed at a temperature at least about 80°C above a thermal transition temperature of at least one polymeric component of at least one of the layers. The annealing is continued for a time sufficient for the at least one polymeric component to partially diffuse into the adjacent layer. Whether at least partial diffusion occurs can be observed indirectly by an increase in peel strength of the membrane layers. Applicants described above the comparison of Example 1 and Comparative Example A, where annealing Example 1

increased the peel strength four fold compared to non-annealed Comparative Example A, demonstrating that partial diffusion occurred.

In comparison, the Ramesh patent teaches that the annealing carried out on the heat shrinkable films *decreases* peel strength compared to non-annealed films. This is not the annealing set out in Applicants' claims; partial diffusion has *not* occurred.

The Ramesh patent sets out to solve the problem of decreased peel strength, while still annealing at the storage temperature to prevent width shrinkage. In the Ramesh modified method, the heat shrinkable film is annealed in a way so that its interlayer adhesion does not decrease as much as in the prior method described in Column 2. The Ramesh patent does *not* teach or suggest that its annealing step increases interlayer adhesion; it merely teaches that the adhesion is not destroyed as it was in the previous method.

Further, Applicants believe it is important to understand that heating an oriented film again to its orientation temperature, a temperature at which molecular movement takes place, causes the film to shrink "almost to its original unstretched, i.e., pre-oriented dimensions." Column 6, lines 18-20. Thus, if the Ramesh annealing step is carried out at a temperature sufficient to allow molecular movement, and for a time sufficient for partial diffusion from one layer into an adjacent layer, the film is going to shrink. It would then be unsuitable for the Ramesh purposes. The Ramesh films are oriented at temperatures between 60 and 140°C; the annealing is carried out at a temperature of greater than 35°C but no more than 100°C, in a way that *preserves* heat shrinkability. Column 14, lines 23-27; column 3, lines 53-56. See also column 27, lines 50-62 (describing necessary free shrink to work effectively in cook-in applications).

Thus, the Ramesh patent does not teach an annealing process for annealing at a temperature above a thermal transition temperature for at time sufficient for at least partial diffusion across the interfacial boundary to take place.

The presently claimed annealing for a time sufficient for partial diffusion does not take place in the Ramesh method. The “annealing” of the Ramesh method may be done at temperatures as low as 35°C and for times as short as a fraction of a second. See column 14, lines 23-53. The temperatures for the Ramesh reheating step are preferably less than about 55°C. See *id.*, lines 39-40. The Ramesh document teaches extremely short exposure times. *Id.*, line 53. The Ramesh film needs to retain its heat-shrink characteristic.

Even were the Ramesh annealing carried out at a higher temperature, the Ramesh reference provides no motivation to maintain that temperature for a time sufficient for the at least one polymeric component to partially diffuse into the adjacent layer. It would appear that molecular movement on that scale is antithetical to the Ramesh film and its required heat-shrinkable characteristic.

The Ramesh patent provides no motivation to alter its conditions or film to attain Applicant’s method of intentional diffusion across the interfacial boundary.

Accordingly, and for all of these reasons, Applicants respectfully ask this Honorable Board to REVERSE the final rejection of these claims over the Ramesh references.

**II. Claim 3 is patentable over Ramesh et al., US 6,274,228 in view of Wang et al., U.S. Patent No. 6,124,007.**

Claim 3 is patentable over the Ramesh patent for the reasons already discussed. The Wang patent does not provide the teachings absent in the Ramesh patent. The Wang angioplasty balloon has two layers of separately-oriented thermoplastic materials. One tube is stretched, inserted into the other, then the other tube is stretched. A post-blowing annealing shrinks the balloon so that it has a “stepped compliance curve” as in Figure 7. The oriented material is partially relaxed. See column 6, line 50 to column 7, line 3. There is no teaching or suggestion of annealing the Wang angioplasty balloon under the conditions of claim 3.

There is, moreover, no motivation to turn to the Wang reference, save in hindsight of Applicant’s invention. The Ramesh patent does not appear to require improved flexibility or burst strength. The Wang patent is not concerned with conditions for adhesion between film layers and does not teach selecting materials and conditions that result in inter-laminar diffusion and increased adhesion.. Declaration of Richard L. Watkins. The mere existence of the Wang materials is not sufficient to motivate one to modify the Ramesh method with them.

Accordingly, and for all of these reasons, Applicants respectfully ask this Honorable Board to REVERSE the final rejection of claim 3.

**III. Claims 4, 16-19, and 26-28 are patentable over Ramesh et al., US 6,274,228 in view of Bonk et al., US 6,082,025.**

These claims are patentable over the Ramesh patent for the reasons given with regard to independent claim 1..

The Bonk reference does not remedy the shortcomings of the Ramesh patent. The Bonk patent does not describe any post-forming heating of its laminate membranes. Further, there is no motivation to turn to the Bonk patent materials to modify the Ramesh patent cook-in laminates. The mere existence of other materials used in laminates in other applications provides no motivation to select them for the Ramesh application or process. Even were one to select other materials, the Ramesh patent does not teach one how to improve interlayer adhesion over an initial adhesion of a laminate by causing a polymeric component to partially diffuse into an adjacent layer.

Accordingly, Applicants respectfully ask this Honorable Board to REVERSE the final rejection of claims 4, 16-19, and 26-28.

**IV. Claims 10-15 are patentable over Ramesh et al., US 6,274,228 in view of Bonk et al., US 6,082,025 and Wang et al., U.S. Patent No. 6,124,007.**

These claims are patentable over the Ramesh and Bonk patents for the reasons given above with regard to claim 4. The Wang patent forms its angioplasty balloon by stretching two tubes to orient the materials, inserting one tube in the other (before or after stretching the second tube), and pressurizing the tubes at a temperature above ambient. Column 2, line 55 to column 3, line 33.

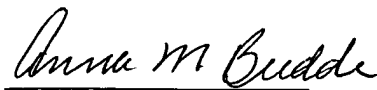
A post-blowing annealing shrinks the balloon so that it has a “stepped compliance curve” as in Figure 7. The annealing step partially relaxes the oriented material. See column 6, line 52 to column 7, line 3. The Wang patent states that its balloons can be easily peeled apart. Column 6, lines 28-29. The Wang patent does not speculate on whether annealing with its concomitant shrinkage of layers which had been formed independently at different stretch ratios. Applicant’s opinion is that one would see no change in interlaminar adhesion. Declaration of Richard L. Watkins, page 2.

Accordingly, Applicants respectfully ask this Honorable Board to REVERSE the final rejection of claims 10-15.

#### Conclusion

The present claims are patentable over the cited art. Applicants, therefore, respectfully petition this Honorable Board to reverse the final rejection of the claims on each ground and to indicate that all claims are allowable.

Respectfully submitted,



Anna M. Budde

Registration No. 35,085

January 30, 2006  
Harness, Dickey & Pierce, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

Claim Appendix

*Copy of the Claims Appealed*

1. A method for improving adhesion between two adjacent layers of a laminate membrane, comprising the steps of:
  - (a) forming a laminate having a first thermoplastic layer adhered to an adjacent second thermoplastic layer and having an interfacial boundary between the first thermoplastic layer and the second thermoplastic layer;
  - (b) after a lag time when the laminate is below a temperature at which significant diffusion across the interfacial boundary takes place, annealing the laminate at a temperature at least about 80°C above a thermal transition temperature of at least one polymeric component of at least one of the layers for a time sufficient for the at least one polymeric component to partially diffuse into the adjacent layer.
3. A method according to claim 1, wherein at least one of the first and second layers includes a semicrystalline polymeric component.
4. A method according to claim 1, wherein the first layer is a thermoplastic elastomer layer and the second layer is a thermoplastic polymeric barrier layer.
5. A method according to claim 1, wherein the laminate is annealed for at least about 15 minutes.



6. A method according to claim 1, wherein the laminate is annealed for at least about 30 minutes.
7. A method according to claim 1, wherein the laminate is annealed for at least about 40 minutes.
8. A method according to claim 1, wherein the laminate membrane is annealed at a temperature above a thermal transition temperature of at least one component of each of the first and second layers.
10. A method according to claim 4, wherein the laminate is formed into a shape by blow molding before the annealing step.
11. A method according to claim 10, wherein the annealing step is carried out within about 2 hours of the blow molding.
12. A method according to claim 10, wherein the annealing step is carried out within about 1.5 hours of the blow molding.
13. A method according to claim 10, wherein the annealing step is carried out within about 1 hour of the blow molding.

14. A method according to claim 10, wherein the annealing step is carried out within about 30 minutes of the blow molding.
15. A method according to claim 10, wherein the annealing step is carried out within about 15 minutes of the blow molding.
16. A method according to claim 4, wherein the annealing step is carried out at a temperature of at least about 100°C.
17. A method according to claim 4, wherein the annealing step is carried out at a temperature of up to about 150°C.
18. A laminate formed according to the method of claim 4, wherein the first layer comprises a thermoplastic polyurethane prepared from a polyester diol and the second layer comprises an ethylene-vinyl alcohol copolymer.
19. A laminate formed according to the method of claim 18, further comprising at least a third layer comprising a thermoplastic polyurethane prepared from a polyester diol that is adjacent to the second layer.

26. A method according to claim 1, wherein at least one of the polymeric components of at least one of the first and second layers has a glass transition temperature in the range of from about -30°C to about 20°C.

27. A method according to claim 4, wherein the thermoplastic elastomer layer comprises a material selected from the group consisting of polyurethanes prepared using polyester, polyether, and polycarbonate diols, flexible polyolefins, styrenic thermoplastic elastomers, polyamide elastomers, polyamide-ether elastomers, polymeric ester-ether elastomers, flexible ionomers, thermoplastic vulcanizates, vulcanized EPDM in polypropylene;, flexible poly(vinyl chloride) homopolymers and copolymers, flexible acrylic polymers, and combinations thereof.

28. A method according to claim 4, wherein the thermoplastic polymeric barrier layer comprises a material selected from the group consisting of ethylene-vinyl alcohol copolymers, vinylidene chloride polymer, acrylonitrile polymer, copolymers of acrylonitrile and methyl acrylate, semicrystalline polyesters, polyethylene terephthalate, polyamides, crystalline polymers, epoxy resins based on N,N-dimethylethylenediamine and resorcinol, polyurethane engineering thermoplastics, and combinations thereof.

## EVIDENCE APPENDIX

### Evidence entered by examiner and relied on by appellant

Declaration of Richard L. Watkins, entered in the record with the Reply filed June 27, 2002.

### Evidence relied on by examiner as to grounds of rejection

Ramesh et al., US 6,274,228

Wang et al., US 6,124,007

Bonk et al., US 6,082,025

## RELATED PROCEEDINGS APPENDIX

There is as yet no decision on the appeal filed in U.S. Patent Application 10,137,531.